

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS SMITH PITTERSON,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

22-cv-6456

ORDER


On January 6, 2023, Magistrate Judge Stewart D. Aaron issued a Report and Recommendation in the above-captioned matter recommending denial of the petition filed by Carlos Smith Pitterson, pro se, pursuant to 28 U.S.C. § 2255. On January 22, 2023, Pitterson filed timely objections, in which he continued to insist that he received ineffective assistance of counsel because his attorney did not pursue an affirmative defense of duress at trial. The same day, he filed an amended petition raising the same argument, as well as additional points about sentencing and jurisdiction.

After reviewing the Report and Recommendation de novo, the Court overrules Pitterson's objections, adopts the Report and Recommendation, and denies the petition with prejudice. For the reasons stated in the Report and Recommendation, the Court agrees with the magistrate judge's analysis that "Pitterson's counsel's decision was an objectively reasonable one" and, in any event, "Pitterson has not shown that there is a reasonable probability that, if this defense had been raised, the result of the proceeding would have been different." ECF No. 14, at 9 & n.7. The Court also rejects

Pitterson's sentencing and jurisdictional arguments, see ECF No. 16, as meritless.

On September 11, 2023, the Court received a second follow-up petition challenging the Court's subject matter jurisdiction. The Court denies that petition with prejudice as untimely, duplicative, and frivolous. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); Neitzke v. Williams, 490 U.S. 319, 325 (1989). The Clerk is directed to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
September 19, 2023